

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Document # 32

U.S.C.A. # _____

U.S.D.C. # 07-CV-6624

JUDGE: PKC

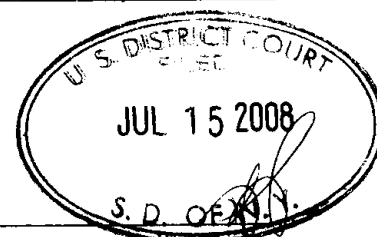
DATE: JULY 15, 2008

Gordon

-v-

Pelumbo, et al

INDEX TO THE RECORD ON APPEAL



PREPARED BY (NAME): THOMAS R. PISARCZYK
FIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK
ADDRESS: 500 PEARL STREET, ROOM 370
NEW YORK, NEW YORK 10007
PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES _____

| DOCUMENT DESCRIPTION | DOC. # |
|--|--------|
| CLERK'S CERTIFICATE | |
| SEE ATTACHED LIST OF NUMBERED DOCUMENTS | |
| ** ONLY CIRCLED DOCUMENTS ARE INCLUDED ** | |
| ** ALL OTHERS MISSING AT THIS TIME ** | |

(☒) Original Record

(☐) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 10TH Day of July, 2008.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| <p>-----</p> <p style="text-align: center;"><i>Gordon</i></p> <p style="text-align: center;">-v-</p> <p style="text-align: center;"><i>Pelumbo, et al</i></p> <p>-----</p> | <p>U.S.C.A. # _____</p> <p>U.S.D.C. # <u>07-cv-6624</u></p> <p>JUDGE: <u>PKC</u></p> <p>DATE: <u>JULY 15, 2008</u></p> |
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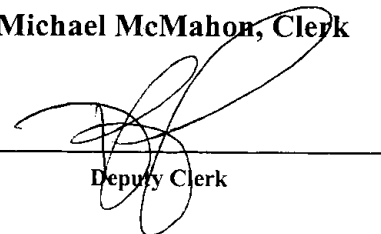
Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 31, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

| <u>Date Filed</u> | <u>Document Description</u> |
|-------------------|---|
| _____ | _____ |
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| _____ | BALANCE OF FILE MISSING AT THIS TIME |
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In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 10TH Day of July In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 233RD year.

J. Michael McMahon, Clerk

By 
Deputy Clerk

APPEAL, CASREF, PRO-SE

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-06624-PKC-DCF
Internal Use Only

Gordon et al v. Palumbo et al
Assigned to: Judge P. Kevin Castel
Referred to: Magistrate Judge Debra C. Freeman
Cause: 18:1961 Racketeering (RICO) Act

Date Filed: 07/23/2007
Jury Demand: Plaintiff
Nature of Suit: 470 Racketeer/Corrupt Organization
Jurisdiction: Federal Question

| Date Filed | # | Docket Text |
|------------|---|--|
| 07/23/2007 | 1 | COMPLAINT against Vivian Tuliato, Abe Rill, Jose Antonio Ruiz, Carlos Guevara, Carl Lieberman, Nancy Lieberman, Brett Lieberman, Jay Anderson, Jay Anderson(as Trustee of the Feil Foundation), Alan Rosenbloom, Brian Palumbo, Niles Welikson, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil, Andrew Rattner. (Filing Fee \$ 350.00, Receipt Number 622002) Document filed by David Gordon, Jacqueline Swiskey.(mbe) (Entered: 07/26/2007) |
| 07/23/2007 | | SUMMONS ISSUED as to Vivian Tuliato, Abe Rill, Jose Antonio Ruiz, Carlos Guevara, Carl Lieberman, Nancy Lieberman, Brett Lieberman, Jay Anderson, Jay Anderson(as Trustee of the Feil Foundation), Alan Rosenbloom, Brian Palumbo, Niles Welikson, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil, Andrew Rattner. (mbe) (Entered: 07/26/2007) |
| 07/23/2007 | | Magistrate Judge Debra C. Freeman is so designated. (mbe) (Entered: 07/26/2007) |
| 08/01/2007 | 2 | ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (including scheduling, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Debra C. Freeman. (Signed by Judge P. Kevin Castel on 7/31/2007) (jar) (Entered: 08/02/2007) |
| 08/10/2007 | 3 | LETTER addressed to Mr. Gordon and Ms. Swiskey from Magistrate Judge Debra C. Freeman dated 8/9/07 re: LETTER addressed to Ms. Batyeva from Judge Debra C. Freeman dated 8/9/07 re: Letter informing Pro Se Litigants that this case was referred to Magistrate Judge Debra C. Freeman by Judge P. Kevin Castel for General Pretrial Supervision.(tro) (Entered: 08/14/2007) |
| 10/09/2007 | 4 | ENDORSED LETTER addressed to Judge P. Kevin Castel from David Gordon dated 9/27/07 re: plaintiff. ENDORSEMENT: I have a Notice of Motion to remand (Docket #8) with an accompanying 3 page declaration of Mr. Gilbert which annexes Exhibits "A" through "E". I have a 7-page memorandum of law from Clermont York Associates. Any responsive papers by Mr. Gordon, beyond his letter of 9/27, will be considered on this motion if served and filed by 10/22/07, 5 p.m. Any reply by movant is due 10/29. No extensions or adjournments. (Signed by Judge P. Kevin Castel on 10/4/07) (pl) (Entered: 10/10/2007) |
| 10/22/2007 | 6 | AMENDED COMPLAINT amending 1 Complaint, against American International Group, Atlantic Mutual Insurance Company, Brian J. Bolan, Louis Feil, Gennet Kallmann Antin & Robinson, P.C., Bella M. Goz, Bernard J. Goz, Nicole Goz, Stanley Kallmann, Vivian Tuliato, Abe Rill, Jose Antonio Ruiz, Carlos Guevara, Carl Lieberman, Nancy Lieberman, Brett Lieberman, Jay Anderson, Jay Anderson(as Trustee of the Feil Foundation), Alan Rosenbloom, Brian Palumbo, Niles Welikson, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil, Andrew Rattner. Document filed by Louis Feil, Nicole Goz, Bernard J. Goz, Bella M. Goz, Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., American International Group, Atlantic Mutual Insurance Company. Related document: 1 Complaint, filed by Jacqueline Swiskey, David Gordon.(kco) (Entered: 10/29/2007) |
| 10/22/2007 | | AMENDED SUMMONS ISSUED as to Vivian Tuliato, Abe Rill, Jose Antonio Ruiz, Carlos Guevara, Carl Lieberman, Nancy Lieberman, Brett Lieberman, Jay Anderson, Jay Anderson(as Trustee of the Feil Foundation), Alan Rosenbloom, Louis Feil, Nicole Goz, Bernard J. Goz, Bella M. Goz, Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., American International Group, Atlantic Mutual Insurance Company, Brian Palumbo, Niles Welikson, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil, Andrew Rattner. (kco) (Entered: 10/29/2007) |
| 10/22/2007 | | MEMORANDUM TO THE DOCKET CLERK: an amended summons was issued on 10/22/2007. (kco) (Entered: 10/30/2007) |
| 10/22/2007 | 7 | UNSIGNED ORDER TO SHOW CAUSE filed by David Gordon, Jacqueline Swiskey. defendants shall show cause as to why preliminary injunction should not be granted. Attached is Affidavit of David Gordon in Support(djc) (Entered: 10/30/2007) |
| 10/24/2007 | 5 | ORDER re plaintiffs' proposed order to show cause which would bring on a motion for a preliminary injunction.....I decline to sign it. (Signed by Judge P. Kevin Castel on 10/23/07) copies sent by chambers.(cd) (Entered: 10/25/2007) |
| 02/08/2008 | 8 | ORDER Plaintiff, who is proceeding without a lawyer, is invited to contact the Pro Se Clerk's Office located in Room 230, U.S. Courthouse, 500 Pearl Street, New York, NY 10007. The Pro Se Clerk's Office has useful information for self-represented parties. Plaintiff's attention is directed to Rule 4(m), Fed.R.Civ.P., which provides in relevant part that This Order is Notice to Plaintiff that if Service is not made within the 120 Day Period and that Period has not been Extended upon a Written request by Plaintiff, Then the Lawsuit will be Dismissed as to the Party of Parties Not served. Dismissal means that the Lawsuit will be Over and the Plaintiff Will Recover Nothing. A plaintiff, who is relying upon service of process by the United States Marshal, has a duty to provide information sufficient to identify and locate each defendant. Further, a plaintiff who has not received confirmation from the United States Marshal that service has been made, has a duty of inquire further, for example, by checking the docket sheet and taking steps to ensure that timely service is made. SO ORDERED. (Signed by Judge P. Kevin Castel on 2/7/2008) (jmi) (Entered: 02/08/2008) |
| 02/20/2008 | 9 | AFFIDAVIT OF SERVICE of Summons and Amended Complaint. Vivian Tuliato served on 2/15/2008, answer due 3/6/2008; Abe Rill served on 2/15/2008, answer due 3/6/2008; Jose Antonio Ruiz served on 2/15/2008, answer due 3/6/2008; Carlos Guevara served on 2/15/2008, answer due 3/6/2008; Carl Lieberman served on 2/15/2008, answer due 3/6/2008; Nancy Lieberman served on 2/15/2008, answer due 3/6/2008; Brett Lieberman served on 2/15/2008, answer due 3/6/2008; Jay Anderson served on 2/15/2008, answer due 3/6/2008; Jay Anderson(as Trustee of the Feil Foundation) served on 2/15/2008, answer due 3/6/2008; Alan Rosenbloom served on 2/15/2008, answer due 3/6/2008; Louis Feil served on 2/15/2008, answer due 3/6/2008; Nicole Goz served on 2/15/2008, answer due 3/6/2008; Bernard J. Goz served on 2/15/2008, answer due 3/6/2008; Bella M. Goz served on 2/15/2008, answer due 3/6/2008; Stanley Kallmann served on 2/15/2008, answer due 3/6/2008; Brian J. Bolan served on 2/15/2008, answer due 3/6/2008; Gennet Kallmann Antin & Robinson, P.C. served on 2/15/2008, answer due 3/6/2008; American International Group served on |

| | | |
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| | | 2/15/2008, answer due 3/6/2008; Atlantic Mutual Insurance Company served on 2/15/2008, answer due 3/6/2008; Brian Palumbo served on 2/15/2008, answer due 3/6/2008; Niles Welikson served on 2/15/2008, answer due 3/6/2008; Horing, Welikson & Rosen, P.C. served on 2/15/2008, answer due 3/6/2008; Carole A. Feil served on 2/15/2008, answer due 3/6/2008; Jeffrey Feil served on 2/15/2008, answer due 3/6/2008; Andrew Rattner served on 2/15/2008, answer due 3/6/2008. Document filed by David Gordon, Jacqueline Swiskey. (tro) (Entered: 02/21/2008) |
| 02/21/2008 | 10 | ENDORSED LETTER addressed to Judge P. Kevin Castel (TO - Magistrate Judge Debra C. Freeman) from David Gordon dated 2/15/08 re: Request for an extension of the service deadline. ENDORSEMENT: As it appears from the Courts Docket that almost all of the defendants have been served, and as it thus appears that plaintiffs have made diligent efforts to effectuate service, plaintiff's time to serve any remaining defendants is extended, in the interest of justice, to 4/30/08. SO ORDERED. (Service due by 4/30/2008.) (Signed by Magistrate Judge Debra C. Freeman on 2/21/08) (db) (Entered: 02/21/2008) |
| 02/29/2008 | 11 | ENDORSED LETTER addressed to Judge P. Kevin Castel from David Nathan dated 2/28/08 re: counsel for defendants request the scheduling of a pre-motion conference. ENDORSEMENT: Pre-motion conference waived. Motion to be filed by 3/21/08, answering papers to be filed by 4/18/08 and reply, if any, by 5/2/08. So Ordered. (Signed by Judge P. Kevin Castel on 2/29/08) (dle) (Entered: 02/29/2008) |
| 03/04/2008 | 12 | ENDORSED LETTER addressed to Judge P. Kevin Castel from Deborah E. Riegel dated 3/4/08 re: Defendants request that the Defendants time to answer or move (which will expire as early as March 5, 2008) be extended until at least one week after this Court has granted or denied the request for pre-motion conference. ENDORSEMENT: Premotion conference is waived, Any and all defendants may move to dismiss provided the motion is filed by March 21, 2008. Answering papers are to be filed by plaintiff by April 18. Any defendant wishing to reply shall do so by May 2. Time for all defendants to answer or move extended to March 21. So Ordered. (Signed by Judge P. Kevin Castel on 3/4/08) (js) (Entered: 03/05/2008) |
| 03/04/2008 | 15 | ENDORSED LETTER addressed to Judge P. Kevin Castel from David Gordon dated 3/3/08 re: Motion to Reconsider 2/29/08 Order. ENDORSEMENT: The use of purple prose in the letter to this Court ("wildly unlawful behavior", "actual torture", "meticulously pleaded complaint") sheds no greater light on the issues. I will trust plaintiff's letter as a motion to reconsider my Order of 2/29/08. As such, it is Denied. SO ORDERED. (Signed by Judge P. Kevin Castel on 3/4/08) (db) (Entered: 03/05/2008) |
| 03/05/2008 | 13 | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., Atlantic Mutual Insurance Company.(Bolan, Brian) (Entered: 03/05/2008) |
| 03/05/2008 | 14 | ANSWER to Complaint. Document filed by Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., Atlantic Mutual Insurance Company.(Bolan, Brian) (Entered: 03/05/2008) |
| 03/12/2008 | 16 | MOTION to Dismiss Pursuant to FRCP Rule 12(b)(6). Document filed by American International Group.(cd) (Entered: 03/14/2008) |
| 03/12/2008 | 17 | MEMORANDUM OF LAW in Support re: 16 MOTION to Dismiss. Document filed by American International Group. (cd) (Entered: 03/14/2008) |
| 03/21/2008 | 18 | FILING ERROR - ELECTRONIC FILING FOR NON-ECF CASE - MOTION to Dismiss <i>Rule 12(b)(6)</i> . Document filed by Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., Atlantic Mutual Insurance Company. (Attachments: # 1 Exhibit pages 18-73, # 2 Exhibit pages 74-118, # 3 Exhibit pages 119-155, # 4 Exhibit pages 156-187)(Bolan, Brian) Modified on 3/24/2008 (jar). (Entered: 03/21/2008) |
| 03/21/2008 | 19 | FILING ERROR - ELECTRONIC FILING IN NON-ECF CASE - MEMORANDUM OF LAW in Support re: 18 MOTION to Dismiss <i>Rule 12(b)(6)</i> . MOTION to Dismiss <i>Rule 12(b)(6)</i> . Document filed by Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., Atlantic Mutual Insurance Company. (Bolan, Brian) Modified on 3/24/2008 (jar). (Entered: 03/21/2008) |
| 03/21/2008 | 20 | NOTICE OF MOTION TO DISMISS: Defendants will move the court for an Order dismissing the amended complaint in its entirety as against the Feil defendants. Document filed by Vivian Tuliato, Abe Rill, Jose Antonio Ruiz, Carlos Guevara, Carl Lieberman, Nancy Lieberman, Brett Lieberman, Jay Anderson, Jay Anderson(as Trustee of the Feil Foundation), Alan Rosenbloom, Louis Feil, Nicole Goz, Bernard J. Goz, Bella M. Goz, Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., American International Group, Atlantic Mutual Insurance Company, Brian Palumbo, Niles Welikson, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil, Andrew Rattner.(jpo) (Entered: 03/24/2008) |
| 03/21/2008 | 21 | MEMORANDUM OF LAW in Support of 20 MOTION to Dismiss the Amended Complaint. Document filed by Vivian Tuliato, Abe Rill, Jose Antonio Ruiz, Carlos Guevara, Carl Lieberman, Nancy Lieberman, Brett Lieberman, Jay Anderson, Jay Anderson(as Trustee of the Feil Foundation), Alan Rosenbloom, Louis Feil, Nicole Goz, Bernard J. Goz, Bella M. Goz, Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., American International Group, Atlantic Mutual Insurance Company, Brian Palumbo, Niles Welikson, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil, Andrew Rattner. (jpo) (Entered: 03/24/2008) |
| 03/21/2008 | 22 | NOTICE OF MOTION for an Order dismissing Plaintiffs Amended Complaint dated October 16, 2007 pursuant to F.R.C.P. 12(b)(6). Document filed by Carl Lieberman, Nancy Lieberman, Brett Lieberman.(jpo) (Entered: 03/24/2008) |
| 03/21/2008 | 23 | AFFIDAVIT of Nancy Littman in Support of 22 MOTION to Dismiss. Document filed by Carl Lieberman, Nancy Lieberman, Brett Lieberman. (jpo) (Entered: 03/24/2008) |
| 03/21/2008 | 24 | MEMORANDUM OF LAW in Support of 22 MOTION to Dismiss. Document filed by Carl Lieberman, Nancy Lieberman, Brett Lieberman. (jpo) (Entered: 03/24/2008) |
| 03/21/2008 | 25 | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Louis Feil, Horing, Welikson & Rosen, P.C., Carole A. Feil, Jeffrey Feil.(jpo) (Entered: 03/24/2008) |
| 03/24/2008 | | ***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF CASE ERROR. Note to Attorney Brian Bolan to MANUALLY RE-FILE Document Motion to Dismiss, Document No. 18. This case is not ECF. (jar) (Entered: 03/24/2008) |
| 03/24/2008 | | ***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF CASE ERROR. Note to Attorney Brian Bolan to MANUALLY RE-FILE Document Memorandum of Law in Support, Document No. 19. This case is not ECF. (jar) (Entered: 03/24/2008) |
| 03/25/2008 | 26 | MOTION for an order pursuant to FRCP 12(b)(6), dismissing the amended complaint for failure to state a claim against the defendants Stanley Kallmann, Brian J. Bolan, Bennet, Kallmann, Antin & Robinson, P.C. and Atlantic Mutual Insurance Company, upon which relief can be granted. Document filed by Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., Atlantic Mutual Insurance Company.(dle) (Entered: 03/25/2008) |
| 03/25/2008 | 27 | MEMORANDUM OF LAW in Support re: 26 MOTION to Dismiss.. Document filed by Stanley Kallmann, Brian J. Bolan, Gennet Kallmann Antin & Robinson, P.C., Atlantic Mutual Insurance Company. (dle) (Entered: 03/25/2008) |

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| 05/06/2008 | 28 | ORDER re request by plaintiffs that I recuse myself from this action: The application is denied, as further set forth in this document. (Signed by Judge P. Kevin Castel on 5/2/08) (cd) (Entered: 05/06/2008) |
| 05/19/2008 | 29 | NOTICE OF CHANGE OF ADDRESS by David Gordon. New Address: P.O. Box 20420, Cherokee Post Office, New York, New York, 10021,. (pl) (Entered: 05/27/2008) |
| 05/19/2008 | 30 | NOTICE OF CHANGE OF ADDRESS by Jacqueline Swiskey. New Address: Cherokee Post Office, P.O. Box 20761, New York, New York, 10021,. (pl) (Entered: 06/02/2008) |
| 06/04/2008 | 31 | NOTICE OF INTERLOCUTORY APPEAL from 28 Order. Document filed by David Gordon, Jacqueline Swiskey. Filing fee \$ 455.00, receipt number E 653047. Copies mailed to attorney(s) of record: Rosenberg & Estis and Gennet, Kallmann, Antin & Robinson, P.C. (tp) (Entered: 06/30/2008) |
| 06/11/2008 | | MEMO ENDORSEMENT on re: 31 Notice of Interlocutory Appeal, filed by Jacqueline Swiskey, David Gordon The Order from which plaintiffs seek to appeal is a non-final order. I will also construe the Notice of Appeal as a motion by plaintiffs for an interlocutory appeal pursuant to 28 U.S.C. 1292(b). Certification is <u>denied</u> because there is no controlling question of law as to which there is a substantial ground for a difference of opinion. (Signed by Judge P. Kevin Castel on 6/11/08) (tp) (Entered: 06/30/2008) |
| 06/30/2008 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 31 Notice of Interlocutory Appeal. (tp) (Entered: 06/30/2008) |
| 06/30/2008 | | Transmission of Notice of Appeal to the District Judge re: 31 Notice of Interlocutory Appeal. (tp) (Entered: 06/30/2008) |